

Report of **Asset Management Service**

Report to **Head of Asset Management**

Date: **20 May 2019**

Subject: **Barley Mow, Lower Town Street, Bramley, LS13 3EN,**

Are specific electoral Wards affected? If relevant, name(s) of Ward(s): Bramley & Stanningley	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Is the decision eligible for Call-In?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: Appendix number:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

Summary of main issues

1. In line with the legislation and regulations set out in the Localism Act 2011, this report considers the nomination to add The Barley Mow Pub, Bramley to the List of Assets of Community Value.
2. The Council has received a nomination from Bramley Rugby League Community Club. As an Industrial & Provident Society the group are eligible to nominate the property, trigger the moratorium period, bid for the property and purchase the property if the opportunity arises.
3. The nomination includes the pub building, car park and grassed area with benches for seating.
4. At the date of the nomination, the pub was closed. The pub closed its doors for trading in November 2018, just 7 months ago and at the time was reported by a local newspaper that "a popular Leeds pub had closed."
5. Officers conclude that there is a time in the recent past when an actual use of the property that was not ancillary, furthered the social wellbeing or interests of the local community and it is realistic to think that this can happen again in the next five years.

Recommendations

The Head of Asset Management is recommended to add The Barley Mow, Lower Town Street, LS13 3EN, to the Lists of Assets of Community Value for the reasons set out in this report.

1 Purpose

- 1.1 The purpose of this report is for the Head of Asset Management to consider whether the Barley Mow Pub, Bramley should be added to the List of Assets of Community Value or whether it should be included on the List of Land Nominated by Unsuccessful Community Nominations in accordance with Part 5 Chapter 3 of the Localism Act 2011.

2 Background information

- 2.1 Part 5 Chapter 3 of the Localism Act 2011 details the legislation for Assets of Community Value (known as the Community Right to Bid). These provisions give community interest groups a right to identify a property or land that is believed to further their social interests or social wellbeing and gives them a fair chance to make a bid to purchase the property or land on the open market if the owner decides to sell. From the date the landowner informs the Council of their intention to sell; eligible community interest groups have a period of six weeks to confirm whether or not they wish to be treated as a potential bidder for the property or land. If they do inform the Council that they want to be treated as a potential bidder, the landowner is prevented from disposing of the property for a period of six months (from the date they originally informed the Council of their intention to sell) unless it is to a community interest group. The landowner is free to dispose of the property at the end of the six month period to whomsoever they see fit.
- 2.2 Part 5 Chapter 3 of the Localism Act 2011 section 90 states if a local authority receives a community nomination, the authority must consider the nomination. The authority must accept the nomination if the land nominated is in the authority's area, is of community value and if the nomination is made by a parish council or by a voluntary or community body with a local connection.
- 2.3 On the 6th April 2015 the law changed removing the permitted development rights for pubs listed as Assets of Community Value. The new law requires a full planning application to be submitted for a change of use or demolition if the pub is listed as an Asset of Community Value.
- 2.4 There has been a national campaign by CAMRA to list pubs as Assets of Community Value. This has resulted in approximately 2,000¹ pubs being listed nationally. To date Leeds City Council has listed 78 properties, of these 39 are public houses.
- 2.5 The nomination is for The Barley Mow, a Grade II listed premises on a 0.57 acre site including the car park and outside garden area with seating. The property is

¹ Data taken from CAMRA website and correct as of 23 April 2019

located within the Bramley & Stanningley ward (please see the red line boundary plan at appendix 1). Ward Members and Area Support (Citizens and Communities) have been made aware of the nomination. .

- 2.6 The freehold interest in the property is owned by Milton Portfolio Property 2 Limited, care of Milton Portfolio Property Limited, First Names House, Victoria Road, Douglas, IM2 4DF, Isle of Man and care of Aprirose Limited, 20 Balderton Street, London W1K 6TL
- 2.7 The landowner has objected to the public house being added to the List of Assets of Community Value.
- 2.8 For property or land to be added to the List of Assets of Community Value, the nominator must be able to demonstrate and satisfy all the listing criteria as laid down in the legislation. The legislation states that buildings or land with a current use is considered to be of community value if, in the opinion of the authority, there is:
- a) *an actual current use of the building or other land that is not an ancillary use which furthers the social wellbeing or social interests of the local community.'*
 - b) *it is realistic to think that there can continue to be non-ancillary use of the building or other land which will further (whether or not in the same way) the social wellbeing or social interests of the local community', and*
- 2.9 For buildings or other land that do not have a current use, the legislation states that land is of community value, if in the opinion of the authority
- a) *there is a time in the recent past when an actual use of the building or other land that was not an ancillary use furthered the social wellbeing or interests of the local community, and*
 - b) *it is realistic to think that there is a time in the next five years when there could be non-ancillary use of the building or other land that would further (whether or not in the same way as before) the social wellbeing or social interests of the local community.*
- 2.10 It is important to note that if either of the criteria stated at 2.8 or 2.9 is met, then the Council must add the nominated asset to the List of Assets of Community Value.

3 Main issues

- 3.1 This report has been based on an assessment of the nomination form, consideration of the landowner's agent's letter in response to the nomination dated 11 June 2019 and a site visit by the Leeds City Council case officer.
- 3.2 The nomination to list The Barley Mow as an Asset of Community Value was received by The Bramley Rugby League Community Club on the 21st May 2019. Copies of the nomination and the letter in response to the nomination are attached to this report.

- 3.3 The Bramley Rugby League Community Club is eligible to submit a nomination to register a property as an Asset of Community Value and to trigger the moratorium in order to make a bid for the property. The Club is eligible as they are an Industrial & Provident Society, and therefore a “co-operative or community benefit society” and its activities are wholly or partly concerned with the Council’s area, and any surplus it makes is wholly or partly applied for the benefit of the Council’s area. The Bramley Rugby League Community Club or other eligible community interest group could consider bidding for and funding a purchase of the nominated property if it is marketed for sale.
- 3.4 The Bramley Rugby League Community Club’s aim is for the Council “to recognise The Barley Mow Pub’s value, historic status, and future potential, by confirming it as an asset of community value, and enabling the local community to have an opportunity to bid to buy it, retaining it for current and future generations to benefit from”.
- 3.5 Land Registry checks have identified that the land is registered.

4 Does a current non-ancillary use further the social interests or social wellbeing of the local community, or did the property have such a use in the recent past?

- 4.1 At the date of the nomination, The Barely Mow was closed and had been since November 2018. The freehold was being marketed for sale by Fleurets as a pub or development opportunity for £450,000. Best and final offers closed on Thursday 30th May 2019.
- 4.2 Bramley Rugby League Community Club’s nomination states that The Barley Mow Pub has played a significant role in Bramley’s history, and in the history of the Bramley Buffaloes. It has a Leeds Civic Trust blue plaque on the building, to convey its role in the development of international Rugby League. Bramley RLFC, the predecessor to the current Bramley Buffaloes were based there from 1890-1965, and it is the site of the first international touring game of Rugby League. The Barley Mow has played an instrumental role in the development of international rugby league and is recognised as such by historians, and fans across the world. The Club moved next door to McLarens Field in 1965, but continued to support the public house.
- 4.3 The nomination suggests that The Barley Mow Pub was a social and community hub and had been since it opened. The nomination states that that local residents remember coming to the pub regularly with their families and would like to see it re-open as a community pub providing a range of social and community activities to bring people together, as well as opportunities for jobs, training and learning.
- 4.4 The nomination states that there are now only three pubs in Bramley (The Old Unicorn, The Daisy Inn and The Black Lion), reducing access to group and social activities, and limiting the options for local residents to gather, make friends, and be ‘a community’ together. The Barley Mow is in a residential area, centrally located in Bramley, and easy to reach for many local people on foot, making it valuable space for community use.

4.5 Pubs are places where people go to drink and socialise. The setting of a pub is a social setting. To argue to the contrary would be to paint a picture of a pub being a place where people went to consume alcohol alone without interacting with other patrons. It is considered that such circumstances would be rare, and nothing has been provided to suggest that The Barley Mow was such a place. If the local community solely intended to consume alcohol, it is considered more likely they would do so in their own home, taking advantage of the lower prices available in shops and supermarkets. The fact that people were visiting a social environment supports the fact that they did so to further their social interests and social wellbeing.

4.8 In their letter of response to the nomination by the landowner's agent, dated 11 June 2019, the landowner has objected to the public house being added to the List of Assets of Community Value based on the points listed below. The case officer has addressed each one in turn:

a) The landowner disputes that the pub was used for community use in the recent past and states there is no evidence to suggest a similar use will exist in the next five years. They also feel that the pub's historical significance is not relevant to the ACV nomination, nor is the building's listing.

- It is acknowledged that the historical significance of the property alone is not a sufficient ground to justify listing. However it ran as a pub, and although there is apparently evidence from the operators that in the 15 months leading up to the pub's closure "the premises were scarcely occupied with average occupancy levels well below the pub's licensed capacity", nevertheless the landlord accepts that the pub was at the very least "a place where people can drink, eat (to a limited degree) and socialise", and therefore it is considered that the use of the pub prior to closing furthered the social wellbeing or interests of the local community. It is not considered that the nominators must demonstrate alternative, or additional community uses as the landowner suggests, but in any event the view expressed in the nomination is that the pub was "a social and community hub". In addition, given that the pub closed in November 2018 which is only seven months ago, even if it is accepted that the use of the pub declined in the preceding 15 months, it is still considered that this use was in the "recent past". .

b) The landowner is concerned about the building's security and condition should it remain vacant for a long period of time, advising that there are weekly security breaches (despite the building being secured, alarmed and monitored by VPS Security Company), with the main issue being attempted theft of York stone from the rear of the building.

- It is acknowledged that there are significant concerns about the security and condition of the pub. However, these concerns would not be appropriate grounds on which to decline the nomination.

c) The landowner disputes that the pub's closure was due to poor management but advises this was a result of under-use due to limited trade.

- It is acknowledged that this is the landowner's view. However, the reasons for the decline in use of the pub are not relevant to determining whether the pub should be listed, and for the reasons mentioned above it is considered that in spite of the decline in use, nevertheless there was an eligible use in the recent past.

d) The landowner disputes that there were any groups, sports teams, regular activities taking place at the pub, or directly linked to the Barley Mow, suggesting that the Bramley Rugby club were not affiliated to the pub or were regular visitors. They advise that the pub staff were not aware of any team/group that frequently used the pub's facilities for meetings/socialising, and no functions were booked since the owner acquired the pub.

- Plainly, there is conflicting evidence about these matters from the nomination and the landowner. . However, for the reasons mentioned above it is considered that there was an eligible use in the recent past, even if the evidence from the landowner is accepted.

e) The landowner states that The Barley Mow was reliant on a local customer base with no passing trade which was not sustainable. They advise the pub closed in November 2018 due to its deteriorating physical condition, poor reputation, falling revenue and customers, competition in the surrounding area, combined with the fact that the community functions, or rather, the public house itself, was drastically underused.

- Again, even if the landowner's evidence on these matters is accepted, for the reasons mentioned above it is considered that there was still an eligible use in the recent past. .

The above is a summary of the main points in the response from the owner's agent relating to whether there was an eligible use of the property in the recent past. All of the above points in the response have been duly considered, however for the reasons mentioned above it is considered that there was an eligible, non-ancillary use of the property in the recent past. ***Is it realistic to think that there is a time in the next 5 years when there could be non-ancillary use of the building that will further the social interests or social wellbeing of the local community (whether or not in the same way)?***

- 4.6 At the date of the nomination, The Barley Mow was closed and was being marketed by Fleuerets for a freehold price of £450,000 with best and final offers by 12 noon on Thursday 30th May 2019. The marketing states that the premises is for sale as either a pub or a development opportunity with a substantial lounge (for 90 patrons) & bar (for 40 patrons), large beer garden (for 98 patrons) & decking area (for 30 patrons) with 4 bed private accommodation in a "densely populated area". This clearly suggests that use as a pub is considered a realistic possibility for the property.
- 4.7 Yorkshire Evening Post reported at the time of its closure that the pub was one of several Milton Pub and Taverns-branded sites across the country that had shut in late 2018 due to changing trading conditions and a review of their portfolio.

- 4.8 It was also reported that The Barley Mow had been advertised for sale before its closure, but a buyer was not found. The nominating group has set out a number of uses for the property, each one centred on the building being brought back into use as a “community pub”, in other words a pub with other community uses.
- 4.9 The nomination states that the Barley Mow Supporters have developed a capital funding plan and are developing a 5 year business plan with support from experts in the field (The Plunkett Foundation). Although the funding required would be significant, community organisations in Bramley have an excellent record in the field of community enterprise and associated fundraising, with Bramley Community Centre, Bramley Credit Union and Bramley Baths all being in community ownership.
- 4.10 The current owner is seeking to dispose of the property so a change in ownership in the near future is likely. Although the prospect of bringing the property into community ownership for an eligible use would require a number of significant challenges to be met, there is clearly considerable experience in community enterprise in Bramley and the organisations running other community assets have raised similar sums in the recent past. On balance officers are of the view that raising the funding required is realistic and that there is plenty of experience in the local community to bring the pub back into use. Nevertheless, the likelihood of community ownership is not the test that the nomination is required to pass. The test is whether or not it is realistic to think that the property could be brought back into an eligible use in the next five years. As this report sets out above, the previous use as a pub is considered eligible and the pub was in private ownership at that time. The marketing particulars for the property contain details of the number of patrons the property can accommodate in pub use, which suggests the current owners are of the view use as a pub is still considered realistic. Officers acknowledge the decline in the pub trade in general and the points made by the owner’s agent in terms of competition in the local area and the overall viability of the Barley Mow as a pub. In their letter in response to the nomination, the owner’s agent has stated that *“The majority of interest has been from restaurant operators which would ensure a social, customer-facing use at the site”* and goes on to say that they will be concentrating their attention on such genuine interests. This description acknowledges that a future social use of the property is a genuine prospect. Given that the property is currently on the market, it is therefore reasonable to consider that it is realistic to think the property could be brought into such a use within the next five years.
- 4.11 In terms of the future use test, officers are of the view that there are a number of realistic future uses for the site. The community nomination is for community uses centred around a pub. The owner’s agent has brought to our attention that they have genuine interests from restaurant operators for what they describe as *“...a social, customer facing use at the site.”* Nothing has been provided to suggest there are likely to be other uses for the property, particularly any non-eligible uses. Therefore, it is considered that it is realistic to think that the property could be brought back into a use which would further the social interests or social wellbeing of the local community within the next five years.

- 4.12 Therefore, it is considered that the criteria for listing as set out in Section 88(2) of the Localism Act 2011 have been met and the nominated land should be added to the List of Assets of Community Value.

5 Corporate Considerations

5.1 Consultation and Engagement

- 5.1.1 The Council's role is to assess the community nomination against the criteria set out in the Localism Act 2011, therefore no consultation and engagement is necessary or appropriate.
- 5.1.2 The Executive Member for Communities has been informed of the nomination.
- 5.1.3 Bramley and Stanningley Members and colleagues in area leadership have been informed of the nomination.

5.2 Equality and Diversity / Cohesion and Integration

- 5.2.1 Equality, diversity, cohesion and integration considerations do not form part of the eligibility criteria upon which nominations are assessed. However, consideration has been given to ensure that all people have an equal opportunity to nominate assets of community value.

5.3 Council policies and City Priorities

- 5.3.1 The Council has an obligation under the Localism Act 2011 to assess eligible community nominations.

5.4 Resources and value for money

- 5.4.1 The Localism Act contains a right to appeal for private landowners, ultimately with them being able to take the Local Authority to a first tier tribunal if they are dissatisfied with a decision on a nomination and are still dissatisfied after a formal internal appeal. If a first tier tribunal finds in the landowners favour, the Local Authority is liable for the landowner's costs of appealing to the tribunal.
- 5.4.2 The Act also gives the landowner a right to compensation if they incur costs or loss of value directly from complying with the Assets of Community Value legislation. This compensation is payable by the Local Authority.

5.5 Legal Implications, Access to Information and Call In

- 5.5.1 The City Solicitor confirms that the conclusions and recommendations in this report represent a reasonable and proper application of the statutory criteria for determining whether the nominated property is an asset of community value.
- 5.5.2 The Head of Asset Management has authority to take the decisions requested in this report under Executive functions 2(o) (specific to the Director of City Development) of the Director of City Development's sub delegation scheme.

5.5.3 The proposal constitutes a significant operational decision and is therefore not subject to call in.

5.6 Risk Management

5.6.1 The report has potential risk implications as the landowner is able to request an internal review which could ultimately lead to an appeal to a first tier tribunal.

6 Conclusions

6.1 In order to be included on the List of Assets of Community Value, all listing criteria, as laid down in Part 5 Chapter 3 of the Localism Act 2011, must be satisfactorily met.

6.2 For the reasons set out above, it is considered that the property had a use in the recent past that furthered the social wellbeing or interests of the local community and that it is realistic to think that it can be brought back into such a use within the next five years. Therefore it is considered that the criteria as set out in section 88(2) of the Localism Act 2011 have been met and the nominated land should be added to the List of Assets of Community Value.

7 Recommendations

7.1 The Head of Asset Management is recommended to add the Barley Mow, Lower Town Street, LS13 3EN to the Lists of Assets of Community Value for the reasons set out in this report.

8 Background documents²

8.1 Nomination form, letter in response to the nomination dated 11 June 2019.

² The background documents listed in this section are available to download from the Council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.

